

## PART I

## SECTION I - CONTRACT CLAUSES

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Clauses Incorporated by Reference with Fill-in

**I.82 52.219-26 SMALL DISADVANTAGED BUSINESS PARTICIPATION  
PROGRAM–INCENTIVE SUBCONTRACTING. (FEB 2000)**

- (b) If the Contractor exceeds its total monetary target for subcontracting to small disadvantaged business concerns in the authorized SIC Major Groups, it will receive 1 percent of the dollars in excess of the monetary . . . . .

**I.83 52.232-25 PROMPT PAYMENT. (JUN 1997)**

- (b) Contract Financing Payments (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the **30th day** after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

**I.84 52.244-2 SUBCONTRACTS. (AUG 1998)**

- (e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts: **to be determined by Contracting Officer's letter.**
- (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: **none.**

Clauses in Full Text**I.85 952.202-1 DEFINITIONS.**

- (a) "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) The following shall be added as paragraph (h) except it will be designated paragraph (g) if Alternate I of the FAR clause is used.
  - (h) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.

**I.86 952.208-70 PRINTING. (APR 1984)**

The Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8 ½ by 11 inches one side only, one color. A requirement is defined as a single publication document.

- (1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.
- (2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the Contractor shall notify the Contracting Officer in writing and obtain the Contracting Officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by B

**I.87 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST. (JUN 1997)  
AND ALTERNATE I (JUN 1997)**

- (a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar

capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

- (i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of two (2) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.
- (ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

- (i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not:
  - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

- (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
    - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
    - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
  - (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
  - (iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.
- (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
  - (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.
- (d) Remedies.

For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an

actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver.

Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

(f) Subcontracts.

1. The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms “contract,” “contractor,” and “contracting officer” shall be appropriately modified to preserve the Government’s rights.
2. Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor.  
If the conflict cannot be avoided or neutralized, the Contractor must obtain approval of the DOE Contracting Officer prior to entering into the subcontract.

**I.88 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES. (OCT 1997)**

- (a) The Contractor shall make the following notifications in writing:
- (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
  - (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

- (b) The Contractor shall—
  - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) Provide the ACO or designated representative ready access to the records upon request;
  - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
  - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

**I.89 52.216-10 INCENTIVE FEE. (MAR 1997) (Applicable to only the Cost Incentive)**

- (a) General. The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.
- (b) Target cost and target fee. The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.
  - (1) "Target Cost," as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.
  - (2) "Target Fee," as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.
- (c) Withholding of payment. Normally, the Government shall pay fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85



percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

- (d) Equitable adjustments. When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.
- (e) Fee Payable.
  - (1) The fee payable under this contract shall be the target fee increased by 20 cents for every dollar that the total allowable cost is less than the target cost or decreased by 20 cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than \$170 million or less than \$50 million of the target cost.
  - (2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of—
    - (i) Payments made under assignments; or
    - (ii) Claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.
  - (3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.
  - (4) For the purpose of fee adjustment, “total allowable cost” shall not include the allowable costs arising out of—

- (i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;
  - (ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
  - (iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
  - (iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance-Litigation and Claims clause;
  - (v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or
  - (vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.
- (5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e) unless otherwise specifically provided in this contract.
- (f) **Contract Modification.** The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.
  - (g) **Inconsistencies.** In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

**I.90 952.217-70 ACQUISITION OF REAL PROPERTY. (APR 1984)**

- (a) Notwithstanding any other provision of the contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property by:
  - (1) Purchase, on the Government's behalf or in the Contractor's own name, with title eventually vesting in the Government.
  - (2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
  - (3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.
- (c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

**I.91 52.219-10 INCENTIVE SUBCONTRACTING PROGRAM. (FEB 2000)**

- (a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award certain percentages to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.
- (b) If the Contractor exceeds its subcontracting goals for small business, HUBZone small business, and women-owned small business concerns in performing this contract, it will receive 1% of the dollars in excess of each goal in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts (e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.
- (c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in 15.404-4 of the Federal Acquisition Regulation.

**I.92 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES.  
(MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:  
It is not a Wage Determination*

<b>EMPLOYEE CLASS</b>	<b>MONETARY WAGE - FRINGE BENEFITS</b>
IGUA Guards	11.63
Boiler Operator Helper	15.19
Carpenter	18.05
Carpenter, Apprentice	15.19
Chemical Operator	18.05
Electrician	18.05
Electrician, Apprentice	15.19
Hazwat	16.34
Heavy Equipment Operator	18.05
Industrial Vacuum Loader Operator	14.61
Industrial Mechanic	18.05
Instrument Mechanic, Apprentice	15.19
Laborer, General	13.47
Laborer, Transportation	13.47
Laundry Worker	13.47
Locomotive/Switchman	18.05
Machinist	18.05
Mason	18.05

Millwright	18.05
Millwright, Apprentice	15.19
Motor Vehicle Operator	16.34
Oiler	14.61
Painter	18.05
Pipefitter	18.05
Pipefitter, Apprentice	15.19
Porter	13.47
Private Motor Carrier Operator	18.05
Professional Warehouse Attendant	14.61
Pump Operator	15.19
QA Checker	16.34
Respirator Wash	14.08
Rigger	18.05
Stationary Engineer	18.05
Waste Water Plant Operator	18.05
Water Plant Operator	18.05
Welder	18.05
Mailroom Supply Specialist	8.51
Word Processing Technician III	10.68
Accounting Technician II	10.68
Information/Records Specialist II	8.51
Information Mgmt. Technician II	10.68
Inventory Supply Specialist	10.68
Medical Assistant	10.68
Procurement Technician II	10.68

Secretary III	10.68
Engineer Aide II	10.68
Environmental/Laboratory Technician II	8.51
Information/Records Specialist III	10.68
Lead Mailroom Supply Specialist	13.23
Procurement Technician III	13.23
Sr. Reproduction Equipment Operator	13.23
Quality Verifier II	10.68
Environmental/Lab Technician III	10.68
Health Physics Technician III	10.68
Drafter III	10.68
Radiation Control Technician III	10.68
Sr. Accounting Technician	13.23
Sr. HR/Industrial Relations Specialist	13.23
Engineer Aide III	13.23
Sr. Graphics Artist	13.23
Engineer Technician	13.23
Sr. Drafter	13.23
Sr. Env./Laboratory Technician	13.23
Sr. Executive Secretary	13.23
Sr. Firefighter/Emergency Response Specialist	13.23
Sr. Radiation Control Technician	13.23
Sr. Health Physics Technician	13.23
Sr. Industrial Hygiene Technician	13.23
Sr. Quality Verifier	13.23

**I.93 952.222-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (APR 1999)**

- (a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites with respect to work performed on-site at a DOE-owned or -leased facility , as provided for at Part 708.
- (b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

**I.94 52.223-7 NOTICE OF RADIOACTIVE MATERIALS. (JAN 1997)**

- (a) The Contractor shall notify the Contracting Officer or designee, in writing, **30** days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).
- (b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall:
  - (1) Be submitted in writing;
  - (2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
  - (3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.
- (c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

- (d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

**I.95 52.223-11 OZONE-DEPLETING SUBSTANCES. (JUN 1996)**

- (a) Definitions. Ozone-depleting substance, as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.
- (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j(b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

“WARNING: Contains (or manufactured with, if applicable  
 \_\_\_\_\_\*, a substance(s) which harm(s) public health  
 environment by destroying ozone in the upper atmosphere.”

\*The Contractor shall insert the name of the substance(s).

**I.96 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS. (APR 1984)**

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the Contractor until disposal is authorized by DOE or at the option of the Contractor delivered to DOE upon completion or termination of the contract. If the Contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

**I.97 952.224-70 PAPERWORK REDUCTION ACT. (APR 1994)**

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).
- (b) The Contractor shall request the required OMB clearance from the Contracting Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes



beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the Contracting Officer.

**I.98 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE. (JUN 1997)**

(a) Definition.

"Eligible employee" means a current or former employee of a Contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its Contractors with respect to work under its contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

**I.99 952.227-9 REFUND OF ROYALTIES. (MAR 1995)**

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any cost or charges in the nature of royalties, license fees, patent or use of or for the rights in patents and patent applications in connection with performing this contract or any subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copyrighted.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are

determined by the Contracting Officer to be properly chargeable to the Government and any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

- (e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.
- (f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

**I.100 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL). (JUN 1987)**

Except for data contained on pages TBD, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this contract) in and to the technical data contained in the proposal dated TBD, upon which this contract is based.

**I.101 52.233-3 PROTEST AFTER AWARD. (AUG 1996) AND ALTERNATE I (JUN 1985)**

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either:
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -
  - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

**I.102 952.237-70 COLLECTIVE BARGAINING AGREEMENTS -- PROTECTIVE SERVICES. (AUG 1993)**

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations.

For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring

continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The Contractor shall include the substance of this clause in any subcontracts for protective services.

**I.103 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND  
COMMERCIAL COMPONENTS. (OCT 1998)**

(a) Definitions.

"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
- (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793);  
and
- (4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

**I.104 952.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-  
AND-MATERIAL, OR LABOR-HOUR CONTRACTS).**

Modify FAR 52.245-5 by adding "and DOE Acquisition Regulation Subpart 945.5" after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause.

**I.105 952.247-70 FOREIGN TRAVEL. (FEB 1997)**

- (a) Foreign travel, when charged directly, shall be subject to the prior approval of the Contracting Officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico, and the United States and its territories and possessions.
- (b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

**I.106 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT. (JUN 1996)**

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial Protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- (d) (1) Indemnification. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against:
  - (i) claims for public liability as described in subparagraph (d)(2) of this clause; and
  - (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in Section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which:
  - (i) arises out of or in connection with the activities under this contract, including transportation; and
  - (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or Governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
  - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
  - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
  - (iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
  - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:
    - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
      - 1. Negligence;
      - 2. Contributory negligence;
      - 3. Assumption of risk; or
      - 4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

- (B) Any issue or defense as to charitable or Governmental immunity; and
  - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
- (v) The term "extraordinary nuclear occurrence" means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR Part 840.
  - (vi) For the purposes of that determination, "off-site" as that term is used in 10 CFR Part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:
- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the clause of action;
  - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
  - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
  - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

- (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
  - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
  - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
  - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under
    - (A) the limit of liability provisions under subsection 170e. of the Act, and
    - (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of Claims. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to:
- (1) require the prior approval of DOE for the payment of any claim that DOE be required to indemnify hereunder; and
  - (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder; take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE Obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.



- (h) Effect of Other Clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to any, other clause of this contract, including the clause entitled Contract Disputes provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Audit and Records - Negotiation, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil Penalties. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) Criminal Penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in Subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as the term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under Section 170c. or k. of the Act for the activities under the subcontract.

#### **I.107 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS. (JUN 1995)**

Consistent with contract-authorized travel requirements, Contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contracted airlines discount air fares, hotels and motels lodging rates and car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available to Contractor employees performing official Government contract business. Vendors providing these services may require that the Contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized Contracting Officer.

- (a) Contracted airlines. Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Travel Regulation (FTR), 41 CFR Part 301-15, Travel Management Programs. It stipulates that cost-reimbursable Contractor employees may obtain discount air fares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, Contracting Officers

may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the Contracting Officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTR provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the Contractor.

- (b) Hotels/Motels. Participating hotels and motels which extend discounts are listed in the FTD, which shows rates, facilities, and identifies by code those which offer reduced rates to cost-reimbursable Contractor employees while traveling on official contract business.
- (c) Car Rentals. The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. Participating car rental companies which offer these terms to cost-reimbursable Contractor employees while traveling on official contract business are listed in the FTD.
- (d) Procedures for obtaining service.
  - (1) Identification and method of payment requirements for participating Federal contracted airlines are listed in the FTR. Travel discount air fares may be ordered by the issuance of a GTR either directly to the Contractor, or to a Scheduled Airline Travel Office (SATO) or Federal Travel Management Center (FTMC), provided the letter of identification signed by the cognizant Contracting Officer accompanies the order. In appropriate instances, such as geographical proximity, Contractors may obtain discount air fares through a DOE office of a cooperating local travel agency when neither a SATO or FTMC is available. Some airlines allow the purchase of discounted air fares with cash or credit card.
  - (2) In the case of hotel and motel accommodations, reservations may be made by the Contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.
  - (3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.
- (e) Standard letter of identification. Contractors shall prepare for the authorizing Contracting Officer a letter of identification based on the following format:

Format for Government Contractors to Qualify for Travel Discounts (To be typed on agency official letterhead)

To: [(Source of ticketing, accommodations or rental)]

Subject: Official Travel of Government Contractor

[Full name of traveler], bearer of this letter, is an employee of [company name] which is under contract to this agency under the Government contract [contract number].

During the period of the contract [give dates], the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.

[Signature, title and telephone number of the Contracting Officer]

**I.108 52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

**<http://www.arnet.gov/far/>**

**I.109 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES. (APR 1984)**

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR 10) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

**I.110 970.5204-2 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION. (JUN 1997)**

- (a) For the purposes of this clause,
  - (1) Safety encompasses environmental, safety and health, including pollution prevention and waste minimization; and
  - (2) Employees include subcontractor employees.
- (b) In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of Environment, Safety and Health (ES&H) functions and activities becomes an integral but visible part

of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:

- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees managing or supervising employees performing work.
  - (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organization levels.
  - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protection of employees, the public, and the environment is a priority whenever activities are planned and performed.
  - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The Contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Contractor will:
- (1) Define the Scope of Work;
  - (2) Identify and analyze hazards associated with the work;
  - (3) Develop and implement hazard controls;

- (4) Perform work within controls; and
- (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Contractor will measure system effectiveness.
- (e) The Contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. On an annual basis, the Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The Contractor shall comply with, and assist the DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's act or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a Contracting Officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) The Contractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.

- (i) The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may require that the subcontractor submit a Safety Management System for the Contractor's review and approval.

#### **I.111 970.5204-9 ACCOUNTS, RECORDS, AND INSPECTION. (MAY 2000)**

- (a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, collection accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

Note: If the contract includes the clause for "Price Reduction for Defective Cost or Pricing Data" set forth at FAR 52.215-22, paragraph (a) above should be modified by adding the words "or anticipated to be incurred" after the words "allowable costs incurred."

- (b) Inspection and Audit of Accounts and Records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provision of Clause I.116. Access to the Ownership of Records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of Subcontractor's Records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.
- (d) Disposition of Records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or

termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause I.116. Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

- (e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (i) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) or any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

The Contractor further agrees to include an “Audit” clause, the substance of which is the “Audit” clause set forth at FAR 52.215-2, in each subcontract which does not include provisions similar to those in paragraph (a) through paragraph (g) and paragraph (i) of this clause, but which contains a “defective cost or pricing data” clause.

- (h) Internal Audit. The Contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the Contracting Officer.
- (i) Comptroller General
  - (1) The Comptroller General of the United States, or an authorized representative, shall have access to the right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract or a subcontract hereunder.
  - (2) This paragraph may not be construed to require the Contractor or Subcontractor to create or maintain any record that the Contractor or Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

- (3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

**I.112 970.5204-31 INSURANCE--LITIGATION AND CLAIMS. (JUN 1997)**

- (a) The Contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The Contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.
- (b) The Contractor shall give the Contracting Officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract. Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the Contractor with respect to such action. The Contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.
- (c) (1) Except as provided in paragraph (c)(2) of this clause, the Contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.
- (2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.
- (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.
- (d) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other bonds and insurance that are maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.
- (e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the Contractor shall be reimbursed—



- (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
  - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, Obligation of Funds (B.2).
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)--
  - (1) Which are otherwise unallowable by law or the provisions of this contract; or
  - (2) For which the Contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Contracting Officer.
- (h) In addition to the cost reimbursement limitations contained in DEAR 970.3101-3, and notwithstanding any other provision of this contract, the Contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by Contractor managerial personnel's
  - (1) Willful misconduct,
  - (2) Lack of good faith, or
  - (3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
- (i) The burden of proof shall be upon the Contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the Contracting Officer challenges a specific cost or informs the Contractor that there is reason to believe that the cost results from willful misconduct, lack of good

faith, or failure to exercise prudent business judgment by Contractor managerial personnel.

- (j)
  - (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the Contractor so as to be separately identifiable. If the Contracting Officer provisionally disallows such costs, then the Contractor may not use funds advanced by DOE under the contract to finance the litigation.
  - (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.
  - (3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.
  - (4) The term "Contractor's Managerial Personnel" is defined in clause paragraph (j) of 48 CFR (DEAR) 970.5204-21.
- (k) The Contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the Contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—
  - (1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;
  - (2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
  - (3) Authorize Department representatives to settle the claim or to defend or represent the Contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department Contractor, the Department may require the Contractor to be represented by common counsel. Counsel for the Contractor may, at the Contractor's own expense, be associated with the Department representatives in any such claim or litigation.

**I.113 970.5204-58 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES.  
(AUG 1992)**

(a) Program Implementation.

The Contractor shall, consistent with 10 CFR Part 707, “Workplace Substance Abuse Programs” at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a Workplace Substance Abuse Program.

(b) Remedies.

In addition to any other remedies available to the Government, the Contractor’s failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts.

- (1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 20 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR Part 707.
- (2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR Part 707 to agree to develop and implement a Workplace Substance Abuse Program that complies with the requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor’s program, and shall periodically monitor each subcontractor’s implementation of the program for effectiveness and compliance with 10 CFR Part 707.
- (3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR Part 707.

**I.114 970.5204-77 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE  
NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR  
1993. (JUN 1997)**

- (a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the Contractor agrees to (1) comply with the Department

of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

- (b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

**I.115 970.5204-78 LAWS, REGULATIONS, AND DOE DIRECTIVES. (JUN 1997)**

- (a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A list of Applicable Laws, Regulations, Regulatory Permits and Agreements, and DOE Regulations (the Standard/Requirement Identification Document (S/RID)) has been appended to this contract for information purposes. Omission of any applicable law or regulation from the S/RID does not affect the obligation of the Contractor to comply with such law or regulation pursuant to this paragraph.
- (b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the S/RID appended to this contract. Except as otherwise provided for in paragraph (c) of this clause, the Contracting Officer may from time to time and at any time, revise the S/RID by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising the S/RID, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise the S/RID and provide the Contractor with the opportunity to assess the effect of its compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise the S/RID and so advise the Contractor not later than 30 days prior to the effective date of the revision. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of the S/RID pursuant to the clause entitled, Changes, of this contract.
- (c) Environmental, Safety, and Health (ES&H) requirements appropriate for work conducted under this contract have been determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under 48 CFR (DEAR) 970.5204-2. The set of tailored ES&H requirements, as approved by DOE pursuant

to the process, have been incorporated into the S/RID as contract requirements with full force and effect. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

- (d) The Contractor is responsible for compliance with the requirements made applicable to this contract, regardless of the performer of the work. The Contractor is responsible for flowing down the necessary provisions to subcontractors at any tier to which the Contractor determines such requirements apply.

**I.116 970.5204-79 ACCESS TO AND OWNERSHIP OF RECORDS. (JUNE 1997)**

- (a) Government-owned Records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the Contracting Officer may from time to time direct during the process of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of the contract.
- (b) Contractor-owned Records. The following records are considered the property of the Contractor and are not within the scope of paragraph (a) of this clause.
  - (1) Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), except for those records described by the contract as being maintained in Privacy Act systems of records. (See Clause H.36, Privacy Act System of Records.)
  - (2) Confidential Contractor financial information, and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e., the Contractor's Corporate Headquarters);
  - (3) Records relating to any procurement action by the Contractor, except for Records that are under 48 CFR (DEAR) 970.5204-9, Accounts, Records, and Inspection, are described as the property of the Government; and
  - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges.

- (c) Contract Completion or Termination. In the event of completion or termination of this contract, copies of any of the Contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery title to such records shall vest in DOE or its designee, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (d) Inspection, Copying, and Audit of Records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- (f) Records Retention Standards. Special records retention standards, described at DOE Order 1324.5B, Records Management Program and DOE Records Schedules (version in effect on effective date of contract), are applicable for the classes or records described therein, whether or not the records are owned by the Government or the Contractor. In addition, the Contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.
- (g) Flow Down. The Contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
  - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the Contracting Officer);
  - (2) The Contracting Officer determined that the subcontract is, or involves, a critical task related to the contract; or
  - (3) The Subcontract includes 48 CFR (DEAR) 970.5204-2, Integration of Environment, Safety and Health into Work Planning and Execution, or similar clause.

**I.117 970.5204-61 COST PROHIBITIONS RELATED TO LEGAL AND OTHER PROCEEDINGS. (JUN 1997)**

(a) Definitions.

*Conviction*, as used in this section, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction due to a plea of *nolo contendere*.

*Costs* include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the Contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers and directors; and any similar costs incurred before, during, and after commencement of a proceeding which bears a direct relationship to the proceeding.

*Fraud*, as used herein, means

- (i) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents,
- (ii) Acts which constitute a cause for debarment or suspension under FAR 9.406-(2)(a) and FAR 9.407-(2)(a), and
- (iii) Acts which violate the False Claims Act, 31 U.S.C. 3729-3731, or the Anti-kickback Act, 41 U.S.C. 51 and 54.

*Penalty* does not include restitution, reimbursement, or compensatory damages.

*Proceeding* includes an investigation.

- (b) Except as otherwise described in the section, costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, or costs incurred in connection with any criminal, civil, or administrative proceeding by the Federal Government, or a State, local, or foreign government, are not allowable if the proceeding relates to a violation of, or failure to comply with a federal, State, local or foreign statute or regulation by the Contractor, and results in any of the following dispositions:
  - (1) In a criminal proceeding, conviction.
  - (2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of Contractor liability.

- (3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.
  - (4) A final decision by an appropriate Federal official to debar or suspend the Contractor, to rescind or void a contract, or to terminate a contract for default by reason of a violation of or a failure to comply with a law or regulation.
  - (5) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1), (b)(2), (b)(3), or (b)(4) of this section.
  - (6) Not covered by paragraphs (b)(1) through (b)(5) of this section, but where the underlying alleged Contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (b)(5) of this section.
- c.
- (1) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the Contractor and the Federal Government, then the costs incurred by the Contractor in connection with such proceeding that are otherwise unallowable under paragraph (b) of this section may be allowed to the extent specifically provided in such agreement.
  - (2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the Contractor in connection with such a proceeding that are not otherwise unallowable by the regulation or by separate agreement with the United States, may be allowed if the Contracting Officer, in consultation with his or her legal advisor, determines that there is very little likelihood that the third party would have been successful on the merits.
- (d) If a proceeding referred to in paragraph (b) of this section is commenced by a State, local or foreign government, the Contracting Officer may allow the costs incurred in such proceeding, provided the Procurement Executive determines that the costs were incurred as a result of compliance with a specific term or condition of the contract, or specific written direction of the Contracting Officer.
- (e) Costs incurred in connection with a proceeding described in paragraph (b) of this section, but which are not made unallowable by that paragraph, may be allowed by the Contracting Officer only to the extent that:
- (1) The total costs incurred are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;



- (2) Payment of the costs incurred, as allowable and allocable contract costs, is not prohibited by any other provision(s) of this contract;
  - (3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and
  - (4) The amount of costs allowed does not exceed 80 percent of the total costs incurred and otherwise allowable under the contract. Such amount that may be allowed (up to the 80 percent limit) shall not exceed the percentage determined by the Contracting Officer to be appropriate, considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. The amount of reimbursement allowed for legal costs in connection with any proceeding described in subparagraph (c)(2) shall be the amount determined to be reasonable by the Contracting Officer but shall not exceed 80 percent of otherwise allowable costs incurred. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied.
- (f) Contractor costs incurred in connection with the defense of suits brought by employees or ex-employees of the Contractor under section 2 of the Major Fraud Act of 1988, including the cost of all relief necessary to make such employee whole, where the Contractor was found liable or settled, are unallowable.
- (g) Costs which may be unallowable under this clause, including directly associated costs, shall be differentiated and accounted for by the Contractor so as to be separately identifiable. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Contracting Officer shall generally withhold payment and not authorize the use of funds advanced under the contract for the payment of such costs. However, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.